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**UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW JERSEY**

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ALLISON MARIE KYLE, as guardian ad litem
for her daughter E.K.L. who is suing as Plaintiff
on behalf of herself and all others similarly situated,

Docket No.

Plaintiffs,

-against-

SELECTIVE SERVICE SYSTEM,
DIRECTOR OF SELECTIVE SERVICE,
LAWRENCE G. ROMO, in his official capacity,

**COMPLAINT CLASS
ACTION FOR INJUNCTIVE
DECLARATORY RELIEF**

Jury Demanded

Defendants.
-----X

Introduction

1. Plaintiff E.K.L., a resident of Morris County, New Jersey, brings this putative class action on her own behalf and on behalf of all others similarly situated against Defendants Selective Service System of the United States and, in his official capacity, Selective Service Director Lawrence G. Romo, collectively “Defendants.”

2. Ms. E.K.L. alleges that the Military Selective Service Act, 50 U.S.C. Appx § 451 *et seq.*, (“MSSA”) and Defendants’ administration of the Act violate her and the putative class’s equal protection and substantive due process rights under the Fifth Amendment to the U.S. Constitution by requiring only males and not females to register with the Selective Service (“draft registration”) and prohibiting females from registering.

3. Ms. E.K.L. tried to register under the MSSA but was refused solely because she is a woman, which violated her equal protection rights and substantive due process right of association under the Fifth Amendment to the U.S. Constitution.

4. To register, an individual must fill out a form indicating their sex. *See* 32 C.F.R. § 1615.4(a).

5. Ms. E.K.L. recently went to the Selective Service System's website, <http://www.sss.gov/default.htm>, clicked on "Register," which brought up the Selective Service System Online Registration Form. (Exhibit A). When she clicked "Female," she was prevented from registering (Exhibit B) because the Selective Service does not register women. (Exhibit C).

6. Ms. E.K.L. requests declaratory relief by finding the Military Selective Service Act unconstitutional.

7. Ms. E.K.L. requests injunctive relief by enjoining Defendants from registering only males in the age range of 18 to 25 years-old, or requiring that females in the age range of 18 to 25 also register with the Selective Service, or requiring that registration be voluntary for both sexes.

8. This Court will place all similarly situated persons on an equal standing by enjoining all current draft registration or by requiring females to also register or by making registration voluntary for both sexes.

9. Before the Pentagon's formal announcement in January 2013 to open positions whose primary mission was to engage in combat on the ground, the Pentagon enforced policies and engaged in a continuing effort to provide women the opportunity to serve in combat and combat support roles.

10. The basis for the U.S. Supreme Court's 1981 decision in *Rostker v. Goldberg*, 453 U.S. 57, which upheld male only draft registration, has since been eliminated by a series of Congressional actions and Defense Department decisions that today provide females the opportunity to serve in combat and combat support units, such as pilots of combat aircraft, sailors aboard ships in combat situations and certain direct ground combat assignments.

11. The changes in opportunities for women in the military and society over the last three and a half decades along with the Congress and Pentagon's ongoing policies to open up combat and combat support roles in the military to females who qualify for those positions means that males and females are now similarly situated with respect to draft registration.

12. Therefore, requiring only males to register while not requiring females and prohibiting females from registering discriminates against both sexes in violation of Equal Protection as incorporated into the Fifth Amendment of the U.S. Constitution.

13. In addition, the MSSA's statutory requirement that only young males join the pool of potential inductees for combat while young females are barred is irrational and arbitrary given the current status of women in the military and society.

14. The MSSA, therefore, also violates the First Amendment right of association for females 18 to 25 by keeping them out of the pool of potential inductees, which is a violation of the substantive due process rights of the putative female class under the Fifth Amendment.

Jurisdiction and Venue

15. This Court has subject matter jurisdiction under 28 U.S.C. §1331 because the U.S. Government's violation of the equal treatment of females in the putative plaintiff class and its violation of the substantive due process rights of those females are federal questions under the U.S. Constitution's Fifth Amendment.

16. This Court has personal jurisdiction over Defendants in accordance with Fed. R. Civ. P. 4(i)(2).

17. This Court has venue under 28 U.S.C. 1391(e)(1)(C) because the class representative resides in New Jersey and no real property is involved.

Parties

18. Ms. E.K.L. is a 17 year-old woman who will turn 18 this year and is represented by her mother, Allison Marie Kyle, as guardian ad litem for the purposes of this litigation until E.K.L. attains her majority. E.K.L. is a U.S. citizen and resident of Morris County, New Jersey.

19. The female class consists of all present and future 18 to 25 year-old female U.S. citizens and every other 18 to 25 year-old female person residing or who will reside in the United States with some exceptions as listed in Exhibit D.

20. Ms. E.K.L. belongs to the putative plaintive class (“female class”) in this action of present and future 18 to 25 year-old females who because of their sex are not required to register and are prohibited from registering for the draft.

21. Joinder of the members of the female class is impractical because the class consists of over 15 million members. (*See Age and Sex Composition: 2010 Census Briefs*, Table 1: Population by Sex and Selected Age Groups: 2000 and 2010 (May 2011)).

22. The mandated registration of only males 18 to 25 years-old by the MSSA and Defendants along with not requiring members of the female class to register as well as prohibiting the members of the female class from registering violate the equal protection and substantive due process rights of the female class under the Fifth Amendment. “A broad based allegation of civil rights violations typically presents common questions of law and fact.” *Pabon v. McIntosh*, 546 F.Supp. 1328, 1333 (E.D. Pa. 1982).

23. Ms. E.K.L.'s claim, as with the claims of all the members of the female class, arises from the MSSA and Defendants' failure to require Ms. E.K.L. to register for the draft and refusal to permit her to register. Ms. E.K.L.'s legal theories and those of all the female class members rest on the MSSA and Defendants' violation of their equal protection and substantive due process rights under the U.S. Constitution. By litigating her own interests, willingness to comply with discovery and commitment to civil rights, Ms. E.K.L. will necessarily protect the interests of the entire female class.

24. Ms. E.K.L. and her *pro bono* counsel, Roy Den Hollander, who will move this Court for admission *pro hac vice*, who has over 25 years of civil litigation experience and was a litigation associate at Cravath, Swaine & Moore, are able to and will fairly and adequately protect the interests of the female class.

25. Defendant Selective Service System is an agency within the Executive Branch of the Federal Government of the United States whose statutory mission includes being prepared to provide trained and untrained personnel to the Department of Defense in the event of a national emergency.

26. To fulfill this mission, the requirements of the MSSA and proclamations made by the President under the authority granted him by the MSSA, the Selective Service administers the mandatory registration of only males 18 to 25 years-old for possible induction into the armed forces, collects and maintains information on only males potentially subject to military conscription and refers only males who fail to comply with the MSSA for prosecution.

27. Pursuant to the MSSA, the Selective Service is not required to register females and refuses to register females.

28. The purpose of registration is to provide a pool of individuals for subsequent induction—if needed.

29. Defendant Lawrence G. Romo (“Romo”) is the Director of the Selective Service System. The Director is appointed by the President and confirmed by the Senate.

30. This class action is maintainable under Fed. R. Civ. P. § 23(b)(2) because the Military Selective Service Act, 50 U.S.C. Appx § 451 *et seq.*, which the Defendants administer, does not require draft registration by members of the female class and Defendants refuse to allow any members of the female class to register, which makes declaratory or injunctive relief appropriate.

Constitutional Violations

31. The Fifth Amendment to the Constitution states, “No person shall be . . . deprived of life, liberty, or property, without due process of law”

32. “[D]ue process of law” requires fairness, which includes the federal government treating people who are similarly situated equally, unless there is some legitimate reason to treat them differently.

33. Substantive “due process of law” protects the fundamental liberty rights of persons against the federal government acting in an irrational and arbitrary manner when limiting those rights.

34. In 1981, the U.S. Supreme Court in *Rostker v. Goldberg*, 453 U.S. 57, followed the position of Congress that the purpose of draft registration was to create a pool of persons available for combat and combat support roles, and since females were excluded from combat and combat support roles, it made no sense to require them to register for something they would never be used for or put in close proximity to:

The existence of the combat restrictions clearly indicates the basis for Congress’ decision to exempt women from registration. The purpose of registration was to

prepare for a draft of combat troops. Since women are excluded from combat, Congress concluded that they would not be needed in the event of a draft, and therefore decided not to register them. . . . Men and women, because of the combat restrictions on women, are simply not similarly situated for purposes of a draft or registration for a draft. *Id.* 453 U.S. at 77-78.

35. America, war and the military, however, were different in 1981:

- a. 10 U.S.C. § 8549 prevented females from being assigned to duty in aircraft engaged in combat (repealed 1991);
- b. 10 U.S.C. § 6015 prevented females in the Navy from being assigned to duty on vessels engaged in combat missions (repealed 1993);
- c. The Army kept females out of combat and away from the theater of fighting as a matter of established policy, *Goldberg v. Rostker*, 509 F. Supp. 586, 598 (E.D. Pa. 1980)(citing *Requiring Reinstitution of Registration for Certain Persons Under the Military Selective Service Act, and for Other Purposes*, Report No. 96-226 to accompany S.109 at 8-9 (9th Cong. 1st Sess.));
- d. Congress recognized and endorsed the exclusion of women in combat and combat support roles, *id.*;
- e. 42 percent of all positions filled by enlisted personnel in the Army were in specialties, skills or units not available to women, *id.*;
- f. The military had administrative problems concerning housing for women, *id.*;
- g. The performance of sexually mixed units was still in the experimental stage, *id.*;
- h. The societal belief was that the assignment of women to combat would weaken the national resolve once images of the atrocities of war visited on females became public, *id.*;

- i. Mobilizing women through the draft would cause strains on training facilities and administrative services, *id.*; and
- j. The nature of the battlefield was more limited, more confined and relatively well defined, *Report to Congress on the Review of Laws, Policies and Regulations Restricting the Service of Female Members in the U.S. Armed Forces* at 3, February 2012.

36. During the following three and a half decades and before the Pentagon's January 2013 announcement to integrate women into all positions in the military with possibly a few limited exceptions, there had been substantial changes in society, war and the U.S. military. The following are just some examples:

- a. In 1983, approximately 200 U.S. Army and Air Force women were among the forces deployed to Grenada in "Operation Urgent Fury." These women flew helicopters for the first time in armed conflict and served as MPs, intelligence officers, mechanics and logistics specialists, *Timeline of American women in war and the U.S. military from 1945 to 1999*, Wikipedia;
- b. In 1984, all Operational Air Reconnaissance squadrons in the U.S. Navy were opened to women, *id.*;
- c. In 1988, twenty-four Combat Logistics Force ships were opened to women in the U.S. Navy, *id.*;
- d. In 1989, 770 women deployed to Panama in "Operation Just Cause." Two women commanded Army companies in the operation, *id.*;
- e. In 1991, approximately 37,000 women were deployed to the Persian Gulf where they commanded and served in brigade, battalion and company size units in

combat support and combat service support units. Women found themselves engaged in combat even though they were not assigned to such units because of the shifting lines of combat, *Role of Women in the Theater of Operations in Conduct of the Persian Gulf War: Final Report to Congress*, vol. 2, App. R, Department of Defense, (1992);

- f. Desert Storm proved that servicewomen could not be kept safe simply by classifying some jobs as non-combat positions and assigning women to those jobs. As Army Sergeant Barbara Bates put it, “When the shells start coming down, I will be counting on my flak jacket for protection, not my [job title],” <http://www.womensmemorial.org/H&C/History/1990s.html>;
- g. The National Defense Authorization Act for Fiscal Years 1992 and 1993 removed the specific statutory prohibitions on the assignment of Navy and Air Force women to aircraft engaged in combat missions, Pub. L. No. 102-190 § 531, 105 Stat 1290, 1365 (Dec. 5, 1991);
- h. In November 1993, as part of the National Defense Authorization Act for Fiscal Year 1994, Congress repealed the prohibition on assigning Navy women to Navy ships engaged in combat missions, Pub. L. No. 103-160 § 541, 107 Stat. 1547, 1659 (Nov. 30, 1993);
- i. In 1993, the U.S. Navy notified Congress that all aviation squadrons, the Naval Construction Force (“Seabees”), and all classes of ships with the exception of Submarines, Minecounter Measures, Mine Coastal Hunters and Coastal Patrol Boats were open to women, *Timeline of American women in war and the U.S. military from 1945 to 1999*, Wikipedia;

- j. In 1993, the U.S. Navy opened to enlisted women aircrew positions in shore-based combat squadrons, *id.*;
- k. On January 13, 1994, Secretary of Defense Aspin lifted the 1988 “Risk Rule” that excluded women from noncombat units or missions if the risks of exposure to direct combat were similar to those for combat units. Aspin rescinded the rule because during Operation Desert Storm, everyone in the theater of operations was at risk, National Women’s Law Center, *Restrictions on Assignment of Military Women* at 3, January 2014;
- l. Aspin’s recession of the 1988 “Risk Rule” was meant to be a starting point for expanding the role of women in the military by opening up 32,700 Army positions and 48,000 Marine positions, National Women’s Law Center, *Restrictions on Assignment of Military Women* at 4, January 2014;
- m. Aspin imposed a new rule where all service members were eligible to be assigned to all positions for which they were qualified, except that women would be excluded from assignment to units below the brigade level whose primary mission was to engage in direct combat on the ground, which included combat and combat support units that co-located with combat units in the infantry, artillery, armor, combat engineers and special operations units, *Women in Combat: Issues for Congress* at Summary, 3, David F. Burrelli, Congressional Research Service, May 9, 2013;
- n. In May 1994, President Clinton asked the Secretary of Defense for a report to update its mobilization requirements for the Selective Service System as a part of the effort to “continue to review the arguments for and against continuing to

exclude women from [draft] registration now that they can be assigned to combat roles other than ground combat,” *Backgrounder: Women and the Draft in America*, www.sss.gov;

- o. The Secretary’s report recognized the vastly increased role being played by women in each of the Armed Services, and concluded that “[b]ecause of this change in the makeup of the Armed Forces, much of the congressional debate which, in the [Supreme] court’s [1981] opinion, provided adequate congressional scrutiny of the issue . . . would be inappropriate today,” *id.*;
- p. Women served in the 1995 “Bosnian Operation” in a variety of positions, including jobs in the Quartermaster Corps, Combat Stress Detachment, Transportation Company, Signal and in Military Intelligence, *Women in the U.S. Army*, Interactive Timeline, www.army.mil;
- q. In 2000, the Navy appointed the first woman to command a U.S. Navy warship at sea, *Timeline of women in warfare and the military in the United States since 2000*, Wikipedia;
- r. During the 9/11 terror attacks, U.S. combat pilots Lt. Heather Penney-García and Lt. Col. Marc H. Sasseville were ordered to bring down the hijacked airliner United Airlines Flight 93 by ramming their F-16s into it. The plane crashed in Pennsylvania before they could do so. In the attack on the Pentagon, ten active duty, reserve and retired servicewomen were among the casualties, *Timeline of women in warfare and the military in the United States since 2000*, Wikipedia;
- s. During the Afghanistan and Iraq wars, commanders stretched the rules to allow women to bear arms and support combat forces, *Three women pass Marine grunt*

test, Craig Whitlock, The Washington Post, November 20, 2013, but they received no official credit for their combat experience, which is required for advancing up the ranks of the military, *Elite Units in U.S. Military to Admit Women*, Jennifer Steinhauer, N.Y. Times, June 17, 2013;

- t. During the Afghanistan and Iraq wars, the Army and Marine Corps utilized women to search Iraqi females for weapons, to patrol with foot soldiers—usually in door-to-door operations and for convoy escort missions that often came under fire, *Women in Combat: Issues for Congress* at 5, David F. Burrelli, Congressional Research Service, May 9, 2013;
- u. Women were also used as members of gun crews, air crews and in seamanship specialties during those wars, *Pentagon says women in all combat units by 2016*, CNN Staff, June 18, 2013;
- v. In 2003, the first women in the U.S. Coast Guard served in a combat zone in the Persian Gulf, *Timeline of women in warfare and the military in the United States since 2000*, Wikipedia;
- w. A 2007 report by the RAND Corporation noted that hundreds of female Army members serving in the Iraq and Afghanistan wars had received a Combat Action Badge indicating that the Army recognized they had been in combat, *Women in Combat: Issues for Congress* at 6, David F. Burrelli, Congressional Research Service, May 9, 2013;
- x. By 2009, more women had fought and died in the Iraq war than any since World War II, *Timeline of women in warfare and the military in the United States since 2000*, Wikipedia;

- y. In February 2010, Defense Secretary Gates gave notice to Congress of the decision by the Department of the Navy “to implement policy changes to support a phased approach to the assignment of women to submarines.” Letter from Robert Gates, Secretary of Defense, to the Honorable Carl Levin, Chairman of the Committee on Armed Services, United States Senate (Feb. 19, 2010), National Women’s Law Center, *Restrictions on Assignment of Military Women* at 8, January 2014. The new policy was implemented in April 2010;
- z. In June 2010, Secretary Gates gave notice to Congress of the intent “to expand the role of women in the Marine Corps” by opening the military occupational specialties of Counter Intelligence and Human Source Intelligence Operations Officer and Specialist, National Women’s Law Center, *Restrictions on Assignment of Military Women* at 8, January 2014;
- aa. December 2010, the Defense Advisory Committee on Women in the Services recommended that the services should open all related career fields/specialties, schooling and training opportunities that had been closed to women as a result of the Pentagon’s combat exclusion policy and service assignment policies, National Women’s Law Center, *Restrictions on Assignment of Military Women* at 9, January 2014;
- bb. March 15, 2011, the Military Leadership Diversity Commission recommended eliminating the “combat exclusion policies” for women, *From Representation to Inclusion*, Final Report, at vxii, March 15, 2011;
- cc. In November 2011, the first group of U.S. female submariners completed nuclear power school and officially reported on board two ballistic and two guided missile

submarines, *Timeline of women in warfare and the military in the United States since 2000*, Wikipedia;

- dd. By 2011, women were serving at the same operating locations in Afghanistan as some direct ground combat units, *Report to Congress on the Review of Laws, Policies and Regulations Restricting the Service of Female Members in the U.S. Armed Forces* at 3, February 2012;
- ee. Recent combat experiences showed that some women below the brigade level were best suited for assignment to units that engaged in direct combat on the ground, *see id.* at 3;
- ff. By 2011, women constituted approximately 14.5 percent of the 1.4 million Active Component military personnel, or 203,000, and comprised 7.25 percent of general/flag officers and 10.86 percent of the senior enlisted force, *id.* at 3;
- gg. By 2011, 99 percent of the 299,852 Active Component positions in the Air Force were open to women, *id.* at 6;
- hh. By 2011, 66 percent of Army Active Component positions were open to women, *id.* at 7;
- ii. By 2011, 68 percent of Marine Corps Active Component positions were open to women, *id.* at 9;
- jj. By 2011, 88 percent of Navy Active Component positions were open to women, *id.* at 11;
- kk. In February 2012, the Department of Defense “announced a series of modifications to [the 1994 Direct Ground Combat Definition and Assignment Rule] which opened up more than 14,000 new positions to women, including

positions that were collocated with ground combat units and certain positions in ground combat units below the brigade level whose primary missions were to engage in direct combat on the ground,” former Secretary of Defense Panetta Press Conference, January 24, 2013;

- ll. The 1994 Direct Ground Combat Rule was revised as a result of recent conflicts so as to eliminate the co-location assignment restriction that prohibited the assignment of women to units and positions required to physically co-locate and remain with direct ground combat units, *Report to Congress on the Review of Laws, Policies and Regulations Restricting the Service of Female Members in the U.S. Armed Forces* at 3, February 2012;
- mm. The co-location restriction had been made irrelevant by the modern battlefield framework and forward basing concept. There were no longer clearly defined front lines where opposing infantry, armor, and artillery forces confronted each other. Modern war was fluid, and support personnel could just as easily and quickly find themselves under attack. There were no safer rear areas where support operations could be performed within a low-risk environment. *Id.* at 3;
- nn. Many women assigned to units not primarily required to engage in direct ground combat had nevertheless encountered and engaged with or had been engaged by the enemy. Due to the asymmetric nature of counterinsurgency, these instances notably increased in operations throughout Iraq and Afghanistan. *Report to Congress on Women in the Services Review* at 12, Office of the Under Secretary of Defense Personnel and Readiness, July 2013;

- oo. The elimination of 1994 Direct Ground Combat co-location prohibition also provided a greater pool of qualified members from whom combat commanders could draw, *Report to Congress on the Review of Laws, Policies and Regulations Restricting the Service of Female Members in the U.S. Armed Forces* at 4, February 2012, and allowed the Services to directly assign women to operational units based on mission requirements, *Report to Congress on Women in the Services Review* at 12, Office of the Under Secretary of Defense Personnel and Readiness, July 2013;
- pp. Since the start of the wars in Afghanistan and Iraq, 292,000 women have served in those combat zones, *Panetta opens combat roles to women*, Tom Vanden Brook and Jim Michaels, USA Today, January 23, 2013;
- qq. In 2012, the Department of Defense was retrofitting barracks and ships for privacy and weapons systems to facilitate the unrestricted assignment of women, *Report to Congress on the Review of Laws, Policies and Regulations Restricting the Service of Female Members in the U.S. Armed Forces* at i-ii, February 2012;
- rr. By 2012, the Marine Corps and Army had hundreds of officer and enlisted positions within direct ground combat units at the battalion staff level being assigned to women officers and enlisted women, *id.* at 5;
- ss. Beginning in May 2012, the Army opened 22,000 positions in direct ground combat units below the brigade level by allowing women to begin serving in maneuver battalions in nine brigades—as of January 2014, 600 women had been assigned, *Thousands of positions in 132 Army jobs will be opened to women*, Chris Carroll, Stars and Stripes, January 24, 2014;

- tt. By mid-2012, 25 women had been assigned to submarines and had gone on patrols, *Women in Combat: Issues for Congress* at 12, David F. Burrelli, Congressional Research Service, May 9, 2013;
- uu. In September 2012, the Marine Corps made available the physically demanding Infantry Officer Course to female volunteers, *Report to Congress on Women in the Services Review* at 4, Office of the Under Secretary of Defense Personnel and Readiness, July 2013;
- vv. In late 2012, the Marine Corps began assigning women to artillery, tank, combat engineer, combat assault, low altitude air defense and assault amphibious battalions as part of a broader effort to open more combat roles to women. As *Marine Corps tests viability of women in combat roles, some have already joined the ranks*, Jennifer Hlad, Stars and Stripes, May 26, 2015.
- ww. 2013 marked the twentieth anniversary of the Department of Defense allowing women to serve as combat pilots, *Air Force to Pursue Opening Remaining Combat Positions to Women*, DoD News, January 25, 2013.

37. When President Kennedy declared in 1961 that America was going to the Moon, this nation's objective was sealed. There was no doubt as to the direction of NASA's efforts and that the endeavor was based on NASA's prior accomplishments. All that remained was exorcising the devil from the details. So too with integrating women into all or virtually all positions in the military.

38. As a result of changes over the past three and a half decades and the Pentagon's January 2013 announcement that officially rescinded the remainder of the 1994 Direct Ground Combat Definition and Assignment Rule, the military's objective is sealed: the opportunities for females

in combat will equal those for men, with possibly a few limited exceptions that the Secretary of Defense must approve.

39. As former Defense Secretary Leon Panetta said at his January 24, 2013 press conference:

A hundred and fifty-two women in uniform have died serving this nation in Iraq and Afghanistan. Female servicemembers have faced the reality of combat, proven their willingness to fight and, yes, to die to defend their fellow Americans.

....

In life, as we all know, there are no guarantees of success. Not everyone is going to be able to be a combat soldier. But everyone is entitled to a chance.

....

As secretary, when I've gone to Bethesda to visit wounded warriors, and when I've gone to Arlington to bury our dead, there is no distinction that's made between the sacrifices of men and women in uniform. They serve, they're wounded, and they die right next to each other. The time has come to recognize that reality.

40. At the same press conference, the Chairman of the Joint Chiefs of Staff, General Martin Dempsey said:

We are acting to expand the opportunities for women to serve in the United States armed forces and to better align our policies with the experiences that we have had over the past decade of war. We're acting to eliminate all unnecessary gender-based barriers to service.

....

By the way, I saw a ticker on the bottom of one of your [news] networks truck that said, "Women about to be allowed to serve in combat." We're way beyond that. And that's part of the point here, is that women are serving in combat and have been.

....

In fact, in 2003, when I got to Baghdad, as the commander of 1st Armored Division [and entered the Humvee that would be driving me around] I slapped the turret gunner around the leg, and I said, "Who are you?" And she leaned down and said, "I'm Amanda." And I said, "Ah, okay." So, female turret-gunner protecting division commander. And it's from that point on that I realized something had changed, and it was time to do something about it.

41. As a result of Secretary Panetta's announcement, two groups of positions were made available to women. Some units known for forward operations that previously banned women from serving in roles they had elsewhere would open roughly 53,000 positions to women.

Another 184,000 positions would open that strictly excluded women, such as infantry soldiers or special operations commandos. *Women in Combat: What Will it Mean?*, Paul D. Shinkman, U.S. News and World Report, January 24, 2013.

42. By January 1, 2016, after a methodical review of the physical standards needed for each combat job to determine how best to measure fitness, all combat positions will be open to women with possibly a few limited exceptions that the Secretary of Defense must approve. *Women in Combat: What Will it Mean?*, Paul D. Shinkman, U.S. News and World Report, January 24, 2013.

43. “The onus is going to be on [the service branches] to justify why a woman can’t serve in a particular role,” said a senior Defense Department official, *Pentagon removes ban on women in combat*, Ernesto Londono, Washington Post, January 24, 2013, and every 90 days the service chiefs will have to report on their progress, *Military to open combat jobs to women*, Chris Lawrence, with reporting from Barbara Starr, CNN, January 23, 2013.

44. “It will take a while to work out the mechanics in some cases. We expect some jobs to open quickly, by the end of this year [2013]. Others, like special operations forces and infantry, may take longer. . . . We should open all specialties to the maximum extent possible to women. We know they can do it,” said a senior Defense Department official. *Military to open combat jobs to women*, Chris Lawrence, with reporting from Barbara Starr, CNN, January 23, 2013.

45. The Pentagon must notify Congress under 10 U.S.C. § 652(a) of each job or unit to be opened to women. Then the Defense Department must wait 30 days while Congress is in session before implementing the change, assuming Congress does not object. *Id.*

46. Congress has consistently supported the integration of women into combat roles. Former Senate Armed Services Committee chairman, Sen. Carl Levin said the opening of combat

positions to women, “reflects the reality of 21st century military operations.” *Pentagon Opens Combat Roles to Women*, Lolita C. Baldor, Associated Press, January 23, 2013.

47. Since former Defense Secretary Panetta and General Dempsey’s press conference, the integrating of women into combat positions and combat support roles has proceeded unabated, as has Congress’s support for such, for example:

- a. In January 2013, the Senate Armed Services Committee stated, “The committee remains concerned that assignment policies restricting service by women may continue to result in inaccurate characterizations of their service in combat, denying them earned benefits and in some cases needed care and services.” *Women in the U.S. military and combat roles: Research roundup*, Harvard, Kennedy School, January 23, 2013;
- b. The Army, Marine Corps, Navy, Air Force and Special Operations Command’s plans for integrating women into all areas of the military include first opening closed units to women, and then opening all closed military occupational specialties (“MOS”), *Army describes plans for integrating women into combat*, Army News Service, June 18, 2013;
- c. The plans are a continuation of changes in the military started before former Secretary Panetta’s announcement. For example, the Army in 2012 opened 14,000 positions in closed units to female Soldiers who were assigned to maneuver battalion headquarters in nine brigade combat teams, *Army describes plans for integrating women into combat*, Army News Service, June 18, 2013;
- d. Enlisted women will for the first time have the opportunity to serve as cavalry scouts, armor crewmen, infantrymen, and indirect-fire artillery soldiers. As a

result of this change, about 90,640 positions will open for women in the Army.

Army describes plans for integrating women into combat, Army News Service, June 18, 2013;

- e. In January 2013, the Army opened the 160th Special Operations Aviation Regiment to women, the unit that flew Navy SEALs on the mission to kill al-Qaeda leader Osama bin Laden, and began recruiting female pilots and crew chiefs, *Military to open combat jobs to women*, Chris Lawrence, with reporting from Barbara Starr, CNN, January 23, 2013;
- f. January 2013, the New York National Guard decided to begin moving women into combat battalions, *New York Guard to begin moving women into combat battalions*, Eric Durr, www.army.mil, January 30, 2013;
- g. In March 2013, the Army began issuing a combat uniform suited for women that had been in development since 2009, *Unisex Uniforms Debut As Army Opens Units to Women*, Ford Gordon, Associated Press, July 28, 2013;
- h. Spring 2013, the U.S. military opened more than 6,200 new jobs to women in the Army and Marine Corps, *US Military to Open 6,200 New Jobs to Women*, Brendan McGarry and Michael Hoffman, www.Military.com, April 18, 2013;
- i. Memorial Day, 2013, the first female combat soldier statue in America was unveiled at the Coleman Veterans Memorial in Michigan, *Timeline of women in warfare and the military in the United States since 2000*, Wikipedia;
- j. The Army ranger program will be the first to accept women for elite combat training that will allow women to start training as U.S. army rangers by mid-2015

and as navy commandos later, *U.S. military to open elite combat roles to women by mid-2015*, Associated Press, June 17, 2013;

- k. By June 2013, more than 99 percent of Air Force positions were already open to female Airmen. Recruiting of women for the remaining positions (combat rescue officer, special tactics officer, special operations weather officer, enlisted combat controller, enlisted tactical air command and control party, enlisted para-rescue jumpers and enlisted special operations weather) will begin in October 2015, *Air Force Sets Plan to Integrate Women into Combat Jobs by 2016*, Air Force News Agency, June 19, 2013;
- l. June 2013, the Marine Corps opened 56 Ground Intelligence Officer positions to women, *Report to Congress on Women in the Services Review* at 4, Office of the Under Secretary of Defense Personnel and Readiness, July 2013;
- m. By July 2013, the Navy had opened opportunities for women officers on all submarine types: Attack, Fleet Ballistic Missile and Guided Missile Submarines, *Report to Congress on Women in the Services Review* at 11, Office of the Under Secretary of Defense Personnel and Readiness, July 2013, and there were newly commissioned female officers scheduled to report to their Attack subs in fiscal year 2015, *Timeline of women in warfare and the military in the United States since 2000*, Wikipedia;
- n. By July 2013, women officers and enlisted personnel served on virtually every surface ship class in the Navy while the Navy continued to expand opportunities for women as new ships and ship classes were commissioned, *Report to Congress*

on Women in the Services Review at 11, Office of the Under Secretary of Defense Personnel and Readiness, July 2013;

- o. Seventeen Army brigade combat teams were placing women in combat-related jobs, *17 units open combat jobs to women*, Michelle Tan, Army Times, July 10, 2013;
- p. “The Department of Defense is proceeding in a measured, deliberate, and responsible manner to implement changes that enable Service members to serve in any capacity based on their ability and qualifications, unconstrained by gender-restrictive policies,” *Statement of Juliet Beyler*, Director of Personnel management for the Undersecretary of Defense before the House Armed Services Committee on Military Personnel, July 24, 2013;
- q. In August 2013, Marine female enlistees were allowed into the Infantry Training Battalion, which includes training in weapons handling, marksmanship, patrolling, grenade use, sleeping in fighting positions and dealing with improvised explosives, *Marine Corps to open infantry training to enlisted women*, Andrew deGrandpre, Marine Times, August 24, 2013;
- r. In November 2013, three Marine women successfully completed the program in the Marine Infantry Training Battalion, *Three women pass Marine grunt test*, Craig Whitlock, The Washington Post, November 20, 2013 (as of February 2015, 122 women had passed, *As Marine Corps tests viability of women in combat roles, some have already joined the ranks*, Jennifer Hlad, Stars and Stripes, May 26, 2015);

- s. Army leaders are developing gender-neutral standards for infantry and other combat forces and plan to open all units to women by the end of 2015, *Three women pass Marine grunt test*, Craig Whitlock, The Washington Post, November 20, 2013;
- t. Virtually all positions in the Navy and Air Force have been accessible to women for years with the exception of some elite commando teams, *Three women pass Marine grunt test*, Craig Whitlock, Washington Post, November 20, 2013 ;
- u. The Army in November 2013 officially began assigning female officers to lead cannon platoons, *First women step into artillery positions as US military opens combat jobs*, Associated Press, April 15, 2014;
- v. In January 2014, Rear Adm. John Kirby said that former Defense Secretary Chuck Hagel is “committed, as was Secretary Panetta before him, to removing as many barriers to [women] as possible and to make the military service a vocation that one wants to pursue and can pursue for a career.” *Thousands of positions in 132 Army jobs will be opened to women*, Chris Carroll, Stars and Stripes, January 24, 2014;
- w. In March 2014, the Navy opened to women 267 combat positions in its Coastal Riverine Force, which engages in land combat from small boats called “swift” boats, *Army opens artillery positions to women*, Jennifer Griffin, Fox News, March 7, 2014;
- x. In March 2014, the Marines opened to women an additional 11 specialties, reducing the number of fields closed to women to 20 out of about 335 fields,

Experimental force will test Marine women in combat roles, Jim Michaels, USA

Today, March 12, 2014;

- y. In March 2014, the Army opened to women 1,900 active-duty combat field artillery positions from battalion to platoon level as part of the Army's plan to dismantle in phases the barring of women from serving in combat units below the brigade level, *Army opens all field artillery officer jobs to women*, Jim Tice, Army Times, March 6, 2014;
- z. Women began serving as cannon crew members—soldiers who actually position the 4,000-pound cannons, zero in on targets and fire the rounds, *First women step into artillery positions as US military opens combat jobs*, Associated Press, April 15, 2014;.
- aa. In March 2014, the Army also began working toward opening several non-special operations positions that routinely engage in close combat, such as officer and enlisted specialties in the Armor and Infantry branches, *Army opens all field artillery officer jobs to women*, Jim Tice, Army Times, March 6, 2014;
- bb. The Army's goal is to open most combat jobs to women, and gender-neutral standards will be in place by the end of 2015. The campaign began in 2012 when the Army opened 13,000 positions previously closed to women in 80 units. *Army opens all field artillery officer jobs to women*, Jim Tice, Army Times, March 6, 2014;
- cc. In June 2014, the Army opened up about 33,000 Army positions to female soldiers in direct ground combat units below brigade level after the U.S. Army Training and Doctrine Command completed extensive validation studies,

including physical fitness requirements, *Army announces 33,000 positions now available to women*, David Vergun, www.army.mil, June 20, 2014;

- dd. Military officials told reporters in October 2014 that they were taking deliberate steps to ensure smooth transitions, including numerous studies and assessments, in opening all positions to women—the Army has so far opened more than 55,000 positions to women, and only 20 of 335 Marine Corps jobs have yet to be integrated, *Women in the military: All branches say they'll continue to open jobs for female troops*, Drew Brooks, www.FayObserver.com, October 12, 2014;
- ee. In November 2014, female Marines in the ranks of corporal and above became eligible to fill some 2,600 previously closed jobs in active and reserve units, including active-duty artillery, tank, assault amphibian, combat engineer, combat assault, and low-altitude air defense battalions and an array of selected reserve units, *Corps to tackle gender bias as combat jobs open to women*, Hope Hodge Seck, *Marine Times*, November 14, 2014;
- ff. On February 25, 2015, Army Secretary John M. McHugh opened more than 4,100 positions to women in the U.S. Army Special Forces Command, National Guard airborne battalions and tactical psychological teams as part of the Army's phased approach to opening previously closed positions, *Directive Opens 4,100 Special Ops Positions to Women*, USMilitary.com, March 16, 2015. U.S. Army Special Operations Command had been pursuing gender-integration prior to the January 2013 rescinding of the Direct Ground Combat Rule, *id.*;
- gg. As of March 2015, six female Army officers had successfully completed the Ranger Training Assessment Course, and were scheduled to attend Ranger School

in April, a first for the Army, and about 80 more women were scheduled to attend the training and assessment courses in April, *4,100 jobs opening to women in special operations units*, Jim Tice, Army Times, March 4, 2015;

- hh. In testimony before the House Armed Service Committee on March 17, 2015, Pentagon officials said all four of the services were on track to open all military jobs to women by next year, and expected rules for those changes to be in place by this fall, *Services on track to open all military jobs to women*, Leo Shane III, Military Times, March 17, 2015.
- ii. In April 2015, the Army allowed 19 women to attend Army Ranger School, eight of whom completed the first phase and will be allowed to repeat the second phase. *Women in combat units: Final decision due*, Andrew Tilghman, Military Times, June 21, 2015.
- jj. As of April 2015, about 7,200 positions within special operations forces have been opened to women, which include combat jobs in the 160th Special Operations Aviation Regiment, a specialized unit used to fly forces fast, low and deep behind enemy lines at night. *PBS News Hour*, Lolita C. Baldor, April 4, 2015.
- kk. In May 2015, Secretary of the Navy Ray Mabus said, “The working assumption is all billets are going to be open [to women] by the end of the year.” *US Navy plans to offer women combat roles and extended maternity leave*, Alan Yuhas, The Guardian, May 13, 2015.
- ll. As of the filing of this Complaint, the Pentagon has notified Congress under 10 U.S.C. § 652(a) that 91,000 jobs once closed to women are now open to them, and

Congress has not objected. *DoD Seeks Right Standards, Policies for Women in Combat Roles*, Terri Moon Cronk, April 27, 2015.

48. In *Rostker v. Goldberg*, 453 U.S. 57, 76 (1981), the Supreme Court found that the purpose of draft registration was to provide a pool of potential soldiers for combat support and combat.

49. With both males and females available for such roles today, the two sexes are now similarly situated for draft registration purposes and there is no legitimate reason for the Government to discriminate against the female class, so equal protection applies.

50. Further, with both males and females available for such combat roles, there is no reasonable basis for infringing the associational interests of the female class by preventing them from registering.

51. What the military will ultimately do with a pool of female and male registrants is not at issue here. In time of national emergency, males may or may not end up filling all the combat roles that females fill, or vice versa, but what is certain now is that women are no longer barred from swimming with men in that pool of potential soldiers for combat support and combat.

52. It is undisputed that the Military Selective Service Act creates a sex-based difference:

[I]t shall be the duty of every male citizen of the United States, and every other male person residing in the United States, who, on the day or days fixed for the first or any subsequent registration, is between the ages of eighteen and twenty-six, to present himself for and submit to registration at such time or times and place or places, and in such manner, as shall be determined by proclamation of the President and by rules and regulations prescribed hereunder.

Military Selective Service Act, 50 U.S.C. Appx § 453(a).

53. For different treatment based on sex to be constitutional, Defendants must show that it serves an important governmental objective and must be substantially related to the achievement of that objective.

54. Today, the purpose of allowing only men into combat no longer applies, and is no longer practical. American forces have been involved in a war on terror and unconventional wars in Iraq and Afghanistan, which defy the traditional notions of ground combat. For instance, Executive Order No. 13,239 designated all of Afghanistan as a combat zone where military women necessarily served.

55. The evaporation of the linear battlefield, the Army's transformation to modular units and the flexibility necessary to pursue today's insurgents have made exclusions based on "front line" assignments impractical. As retired Brigadier General Stephen M. Koper, president of the National Guard Association, explained, "[t]oday combat may occur in the desert or on Main Street." *More Objections to Women-in-Combat Ban*, Ann Scott Tyson, Washington Post, May 18, 2005.

56. Without the purpose and feasibility of limiting combat to only men, the sections of the Military Selective Service Act that require only male registration and thereby prohibit female registration are in violation of equal protection under the Fifth Amendment and Defendants' acts in administering male only registration while prohibiting female registration also violate equal protection.

57. Men and women are similarly situated when it comes to eligibility for combat and combat support roles; therefore, the exemption of women from draft registration violates equal protection guaranteed by the law.

58. In addition, as made clear by Congress and the Pentagon's policies and an all volunteer military, it is undisputed that the MSSA irrationally and arbitrarily limits the associational rights of females by banning them from the pool of potential inductees. If the two sexes can fight and die together, they can register together; if not, then no one should have to register.

59. The members of the female class deserve justice and they deserve it now. To rationalize that this invidiously discriminatory law may one day be repealed by Congress so let us delay a decision is to refute the *Magna Carta* truism that “to no one will [Government] refuse or delay, right or justice.”

Injuries

60. The female class members are injured by the government violating their equal protection rights to equal treatment and opportunity and violating their substantive due process associational rights by not requiring them to register and forbidding them to register.

61. All the members of the female class are injured to the extent described by Justice Brennan:

“Discrimination itself, by perpetuating ‘archaic and stereotypic notions’ or by stigmatizing members of the disfavored group as ‘innately inferior’ and therefore as less worthy participants in the political community . . . can cause serious noneconomic injuries to those persons who are personally denied equal treatment. . . .”

Heckler v. Mathews, 465 U.S. 728, 739-740 (1984)(citations omitted). And as described by Maj. Mary Jennings Hegar, “The question isn’t whether we want our daughters to be drafted, but what kind of world we want them to inhabit: one where they’re infantilized as passive objects of chivalry or one where they’re empowered to achieve their potential as genuinely equal citizens?” *Selective Service Is an Obligation of Citizenship, Including Women*, Rachel Natelson, U.S. News & World Report, February 12, 2013.

Jury Demand

62. Ms. E.K.L. demands a trial by jury.

WHEREFORE, Ms. E.K.L. requests that this Court declare the Military Selective Service Act, 50 U.S.C. App. § 451 *et seq.*, in violation of the Fifth Amendment to the United

States Constitution; enjoin Defendants from requiring the registration under the Military Selective Service Act of only males, or require the registration of females 18 to 25 years-old, or require registration to be voluntary; and provide any other relief that this Court deems just.

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West Harrison, N.Y.

Respectfully submitted,

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